

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

NATHAN ROBERTS and FREEDOM
TRUCK DISPATCH LLC, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

PROGRESSIVE PREFERRED INSURANCE
COMPANY; PROGRESSIVE CASUALTY
INSURANCE COMPANY; CIRCULAR
BOARD INC.,

Defendants.

Case No. 1:23-cv-01597
Hon. Patricia A. Gaughan
Mag. Judge James E. Grimes, Jr.

**UNOPPOSED MOTION OF THE EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION FOR LEAVE TO FILE AS AMICUS CURIAE**

The Equal Employment Opportunity Commission (EEOC) respectfully moves this Court for leave to file a brief as amicus curiae. In support of the motion, the EEOC states:

1. The EEOC is charged by Congress with enforcing Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* The EEOC has accordingly promulgated Guidelines regarding permissible voluntary affirmative-action plans under Title VII to remedy the effects of past discrimination. 29 C.F.R. Part 1608.

2. The EEOC has a strong interest in the proper interpretation of Title VII as it relates to private-sector, voluntary affirmative-action plans, which extends to ensuring that Title VII is not undermined by the interpretation of other federal laws. *See, e.g., Setser v. Novack Inv. Co.*, 657 F.2d 962, 968 (8th Cir. 1981) (en banc) (“If section 1981 prohibited what title VII permitted with respect to racially preferential remedies, the private employer’s ability to conform its conduct to

federal discrimination statutes would become more complicated and uncertain than it already is.”).

3. This case implicates the standards governing private-sector, voluntary affirmative-action plans under 42 U.S.C. § 1981, which several courts have interpreted as coextensive with Title VII affirmative-action standards. *See Setser*, 657 F.2d at 967; *see also Doe v. Kamehameha Schs./Bernice Pauahi Bishop Est.*, 470 F.3d 827, 839 (9th Cir. 2006) (en banc); *Schurr v. Resorts Int’l Hotel, Inc.*, 196 F.3d 486, 498–99 (3d Cir. 1999); *Edmonson v. U.S. Steel Corp.*, 659 F.2d 582, 584 (5th Cir. Unit B 1981) (per curiam); *Frost v. Chrysler Motor Corp.*, 826 F. Supp. 1290, 1294 (W.D. Okla. 1993); *Stock v. Universal Foods Corp.*, 817 F. Supp. 1300, 1306 (D. Md. 1993).

4. On February 13, all parties consented to the EEOC’s motion. Counsel for the EEOC emailed counsel again on February 21 to ask whether the lapse of eight days affected the parties’ position on the motion. No counsel indicated opposition.

The EEOC respectfully moves this Court for leave to file a brief as amicus curiae in support of the defendants.

Respectfully submitted,

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s/Georgina C. Yeomans
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February 22, 2024

CERTIFICATE OF SERVICE

I certify that on February 22, 2024, I electronically filed the foregoing motion in PDF format via the CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the CM/ECF system.

s/Georgina C. Yeomans
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[PROPOSED] ORDER

Upon consideration of the foregoing Unopposed Motion of the Equal Employment Opportunity Commission for Leave to File as Amicus Curiae, it is hereby ORDERED that the motion is GRANTED.

The Honorable Patricia A. Gaughan

DATED and ENTERED this ____ day of _____ 2024.